

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

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THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

Civil Action No. 4:20-cv-00957-SDJ

GOOGLE LLC,

Defendant.

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## **EXHIBIT B**

**PLAINTIFF STATES' OPENING BRIEF TO THE SPECIAL MASTER  
FOR THE MARCH 7, 2024 HEARING**

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4 IN RE GOOGLE PLAY STORE  
5 ANTITRUST LITIGATION  
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MDL Case No. [21-md-02981-JD](#)  
Member Case No. 20-cv-05671-JD

**FINAL JURY INSTRUCTIONS FOR  
EPIC TRIAL**

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13 The Court will give these final instructions to the jury in the *Epic* trial, Case No. 20-cv-  
14 5671, on the morning of December 11, 2023, before the parties' closing arguments. They are  
15 based on the parties' proposed instructions, Dkt. Nos. 806, 833, the discussion at the jury charge  
16 conference on December 1, 2023, and the Court's practices.

17 For Google's request for a judgment on its breach of contract counterclaim, Dkt. No. 833  
18 at 2 n.2, the Court will decide Epic's illegality defense after the jury returns its verdict, and will  
19 treat the parties' stipulated facts, *id.* at 1-2, as proved.

20 For Instruction Nos. 23 (Willful Acquisition or Maintenance of Monopoly Power Through  
21 Anticompetitive Acts), 29 (Evidence of Competitive Benefits), and 38 (Business Justification  
22 Defense), the Court will give the additional language requested by Google that "to qualify as  
23 'substantially less restrictive,' an alternative means must be virtually as effective in serving the  
24 defendant's procompetitive purpose without significantly increased cost." *Epic Games, Inc. v.*  
25 *Apple, Inc.*, 67 F.4th 946, 990 (9th Cir. 2023) (cleaned up).

26 Epic's request to add a balancing step at the end of Instruction No. 38 (Business  
27 Justification Defense) is denied. The Court will give the instruction consistent with the  
28 formulation in the ABA Model Civil Antitrust Instruction 2E.11. The Court will add a reference

## INSTRUCTION NO. 13

PERMISSIVE INFERENCE

You have seen evidence that Google Chat communications were deleted with the intent to prevent their use in litigation. You may infer that the deleted Chat messages contained evidence that would have been unfavorable to Google in this case.